

August 22, 2019

Mr. Devin Leary  
Human & Rohde, Inc.  
516 Virginia Avenue  
Towson, Maryland 21286

Re: Nyquist Property  
Forest Buffer Variance  
Tracking # 02-19-2952

Dear Mr. Leary:

A request for a variance from Article 33, Title 3, Protection of Water Quality, Streams, Wetlands and Floodplains (i.e. Forest Buffer Law) was received by the Department of Environmental Protection and Sustainability (EPS) on March 13, 2019. This variance seeks to allow the continued existing use of a portion of residential lawn within area that would be Forest Buffer Easement (FBE) for the 100-year floodplain and to allow for the construction of a regulation-sized, fenced, tennis court on this long-standing residential property. The area of impacted FBE totals 18,330 square feet (0.42 acres). The FBE is being applied to the property as a result of several construction activities proposed to occur within the 100-year floodplain on this 25.5-acre, RC-4 parcel. The applicant proposes to mitigate impacts to the unforested buffer by recording a perpetual FBE and associated Declaration of Protective Covenants in the Land Records of Baltimore County as well as by planting over 18,330 square feet of the FBE with native species of deciduous trees, and posting the limit of the buffer to be left undisturbed with protective signage.

The FBE is generated from Beaverdam Run, an order 3, Use III-P (trout & potable supply) stream, and extensive 100-year floodplain that are part of the Gunpowder River watershed. The approximately 19.5-acre FBE, which comprises about 75% of the property, was established in accordance with §33-3-111 of the Forest Buffer Law, which included expansion based on a steep slopes and erodible soils analysis.

This Department has reviewed your request and has determined that a practical difficulty exists, in that both the structures and uses within the buffer predate the Forest Buffer Law. Furthermore, we find that the property is greatly constrained by riparian resources and steep forested slopes, and that the potential for impacts to water quality as a result of this proposal can be adequately minimized by performing mitigative measures.

Therefore, we will grant this request in accordance with §33-3-106(a)(1) of the Baltimore County Code with the following conditions:

1. Impacts to the FBE shall be mitigated by planting 18,330 square feet, a 1:1 ratio, of open FBE onsite. Trees shall be native deciduous species, a minimum 1-inch caliper and planted at a density of 200 stems per acre.
2. Lawn maintenance and any other activities in the FBE and outside of the continued use area shall cease. Mowing and other vegetation control methods within the planting area shall be limited to that necessary to ensure tree survival.
3. Surveyed limits of the non-disturbance portion of the FBE shall be clearly marked onsite at 150-foot intervals and significant turning points with permanent "Forest Buffer-Do Not Disturb" signs (see enclosure) to facilitate identification of buffer limits by all involved parties. These signs, which are available from private sign contractors, shall be installed prior to any permit approval or January 31, 2020, whichever comes first.
4. A final Forest Buffer Protection Plan (FBPP) detailing this mitigation as well as the mitigation required as a condition of the companion alternatives analysis approval, shall be submitted along with an itemized cost estimate for review and approval by EPS staff prior to Environmental Agreement (EA) approval.
5. A FBPP security based on 110% of the aforementioned cost estimate shall be posted via an EA prior to EPS approval of any permit. Release of that surety will be in accordance with the enclosed EA regulations.
6. The following note must appear on all subsequent plans submitted for this project:
  - A variance was granted on August 22, 2019, by the Baltimore County Department of Environmental Protection and Sustainability from the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains. The Forest Buffer shown hereon is reflective of the fact that this variance was granted. Conditions were placed on this variance to reduce water quality impacts including the planting of 18,330 of currently maintained FBE as well as posting of informational and protective signs along the boundary of FBE to be left undisturbed.
7. The Forest Buffer Easement and associated Declaration of Protective Covenants shall be recorded in the Land Records of Baltimore County by January 22, 2020. Recordation shall occur either by right-of-way plat or Exhibit A procedure, the latter which County staff will work with the property owner to record.

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8. This variance approval pertains solely to the tennis court project and continuation of residential yard use in the FBE. Any subsequent project occurring with the FBE and floodplain on this property shall be reviewed on its own merits and shall comply with the variance and alternatives analysis requirements in accordance with §33-3-106 and §33-3-112(c) of the Baltimore County Code, respectively.
9. All State and Federal permits to impact waterways and 100-year floodplain shall be obtained prior to issuance of any County permits entailing such impacts.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the property owners sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Michael S. Kulis at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Director

DVL/msk

Enclosures (2)

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I/we agree to the above conditions to bring my/our property into compliance with Law  
for the Protection of Water Quality, Streams, Wetlands and Floodplains.

\_\_\_\_\_  
Property Owner's Signature                      Date

\_\_\_\_\_  
Property Owner's Signature                      Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name